

<p align="center">DEPARTMENT FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES</p> <p align="center">STANDARDS OF OPERATIONS</p>	Policy Number DMHMRS 04-02	Total Pages 5
	Date Issued April 14, 2003	Effective Date April 14, 2003
References CHS 19038 KRS 194A.060, 210.230, 210.235 § 164.502, 164.510, 164.512, 164.514	Subject Uses and Disclosures of Protected Health Information	

Statement of Policy and Purpose

It shall be the policy of the Department for Mental Health and Mental Retardation Services (DMHMRS) to establish and adhere to guidelines regarding uses and disclosure of protected health information (PHI). Privacy and confidentiality shall be maintained with any use or disclosure of PHI required for treatment, payment or health care operations.

Procedure

A. General Provisions

1. DMHMRS shall be permitted to use or disclose PHI:
 - a. To the individual client.
 - b. Pursuant to and in compliance with a consent.
 - c. Without consent, if consent is not required and has not been sought, to carry out treatment, payment or health care operations. (EXCEPTION: Psychotherapy notes).
 - d. Pursuant to and in compliance with an authorization.
2. DMHMRS shall disclose PHI:
 - a. To the individual client.
 - b. To the Secretary.
3. DMHMRS shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. Exceptions to the minimum necessary shall be recognized as:

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- a. Disclosures or requests by a health care provider for treatment.
 - b. Uses or disclosures made to the individual client.
 - c. Pursuant to an authorization.
 - d. Disclosures made to the Secretary.
 - e. Uses or disclosures required by law.
 4. DMHMRS may not use or disclose PHI covered by an agreed restriction.
 5. DMHMRS may use PHI to create information that is not individually identifiable or disclose PHI only to a business associate of such purpose.
 6. DMHMRS may disclose PHI to a business associate and allow a business associate to create or receive PHI when there is a satisfactory assurance that the business associate will safeguard the information.
 7. When under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decision related to health care, DMHMRS shall treat such person as a personal representative with respect to PHI.
 8. When a workforce member or business associate believes in good faith that DMHMRS has engaged in unlawful conduct or violated professional or clinical standards, or that the care, services or conditions may potentially endanger one or more clients, workers or the public then DMHMRS shall not have violated the disclosure requirements when the disclosure is to:
 - a. A health oversight agency or public health authority authorized by law to investigate or oversee the conduct or conditions of DMHMRS.
 - b. An appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by DMHMRS.
 - c. An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options.
 - d. To law enforcement officials when the workforce member is the victim of a criminal act and the PHI is about the suspected perpetrator.
- B. Use and Disclosure Requiring an Opportunity for the Individual to agree or Object

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1. DMHMRS may use or disclose PHI without written consent or authorization, provided the individual is informed in advance of the use or disclosure and the opportunity to agree or prohibit or restrict the disclosure. DMHMRS may orally inform the individual and obtain an oral agreement or objection.
 2. Facilities representing DMHMRS for treatment of an individual may, except when an objection is expressed, use and disclose to members of the clergy or persons who ask for the individual by name, the following PHI to maintain a directory.
 - a. The individual's name.
 - b. The individual's location within the facility.
 - c. The individual's condition in general terms that does not communicate specific medical information.
 - d. The individual's religious affiliation.
 3. DMHMRS may be permitted use and disclosure of PHI for involvement in the individual's care and for notification purposes. The uses or disclosures may be:
 - a. To a family member, relative, or close friend of the individual, or any other person identified by the individual when the PHI is directly relevant to such person's involvement with the individual's care or payment.
 - b. To notify or assist in notification of a family member, personal representative, or another person responsible for the care of the individual with regards to location, general condition or death.
 - c. When the individual has the capacity to make health care decision and is in agreement or does not express or infer an objection to the use or disclosure.
 4. DMHMRS may, if the individual is not present or had the opportunity to agree or object because of incapacity or an emergency circumstance, exercise professional judgment to determine whether the disclosure is in the best interest of the individual.
- C. Use or Disclosure not requiring Consent, Authorization or an Opportunity to Agree or Object
1. DMHMRS may use or disclose PHI to the extent that such use or disclosure is required by law and is limited to the relevant requirements of such law.

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2. DMHMRS may disclose PHI for public health activities and purposes when:
 - a. A public health authority is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability.
 - b. A public health authority or other appropriate government authority is authorized by law to receive reports of child abuse or neglect.
 - c. A person is subject to the jurisdiction of the Food and Drug Administration to report an adverse event, track products or a person may have been exposed to a communicable disease.
3. DMHMRS may disclose PHI about an individual whom is reasonably believed to be a victim of abuse, neglect, or domestic violence to an authority or agency authorized by law to receive such reports. The individual shall agree to disclosure or disclosure may only be to the limit relevant to the requirements by law.
4. DMHMRS may disclose PHI to a health oversight agency for activities authorized by law. Disclosure may be for, but not limited to, audits, investigations, civil rights laws, inspections, licensure or oversight of benefit or regulatory programs.
5. DMHMRS may disclose PHI in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal or to a subpoena or other lawful process.
6. DMHMRS may disclose PHI for a law enforcement purpose to a law enforcement official of certain types of wounds or physical injuries to the extent as limited by the relevant requirements of the law.
7. DMHMRS may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining cause of death or other duties authorized by law. Additionally, PHI may be disclosed to funeral directors, consistent with applicable law.
8. DMHMRS may use or disclose PHI, when an individual has given prior consent or authorization, to organ procurement organizations.
9. DMHMRS may use or disclose PHI for research with prior authorization or authorization waiver. A waiver may be approved by an Institutional Review Board (IRB).
10. DMHMRS may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if in good faith it is believed it is necessary to prevent or

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lessen a serious and imminent threat to the health or safety of a person or the public.

11. DMHMRS may use and disclose PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of a military mission, if the military authority has published by notice in the **Federal Register** the appropriate military command and the purpose for which the PHI may be used or disclosed.
12. DMHMRS may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

D. Additional Requirements to Uses and Disclosures of PHI

1. DMHMRS may determine that health information is not individually identifiable health information if a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable, determines that the risk is very small that the information could be used to identify an individual and documents the methods and results of the analysis that justify such determination.
2. DMHMRS may assign a code or other means of record identification to allow information de-identified to be re-identified when the code is not derived from or related to information about the individual and the code or means of record identification is not used or disclosed for any other purpose and the mechanism of the code is not disclosed.

E. This policy shall be reviewed and revised as necessary.